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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

JOSEPH SCHWAGERL,

Plaintiff,

V.

CAVALRY PORTFOLIO SERVICES,
LLC, JANE DOE, THERESA DOE,
and MELISSA MEECH,

Defendants.

Case No.:

COMPLAINT

[FDCPA]

I. JURISDICTION

1. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and pursuant to 15 U.S.C. § 1692k(d), and pursuant to 28 U.S.C. § 1367 for pendent state law claims.

1 2. This action arises out of Defendants' repeated violations of the Fair Debt
2 Collection Practices Act, 15 U.S.C. § 1692 et seq. ("FDCPA") and their agents
3 in their illegal efforts to collect a consumer debt from Plaintiff.
4

5 3. Venue is proper in this District because the acts and transactions occurred
6 here, Plaintiffs reside here, and Defendants transact business here.
7

8 **PARTIES**

9 4. Plaintiff Joseph Schwagerl is a natural person who resides in the City of
10 Spokane, County of Spokane, State of Washington, and is a "consumer" as
11 that term is defined by 15 U.S.C. § 1692a(3).
12

13 5. Defendant, Cavalry Portfolio Services, LLC ("Defendant") is an entity who
14 at all relevant times was engaged, by use of the mails and telephone, in the
15 business of attempting to collect a "debt" from Plaintiff, as defined by 15
16 U.S.C. §1692a(5).
17

18 6. Defendant Jane Doe (hereinafter "Defendant Jane Doe") is a natural person
19 who was employed at all times relevant herein by Defendant Cavalry as a
20 collection agent and is a "debt collector" as that term is defined by 15 U.S.C. §
21 1692a(6).
22

23 7. Defendant Theresa Doe (hereinafter "Defendant Theresa Doe") is a natural
24 person who was employed at all times relevant herein by Defendant Cavalry as
25

1 a collection agent and is a “debt collector” as that term is defined by 15 U.S.C.
2 § 1692a(6).

- 3
4 8. Defendant Melissa Meech (hereinafter “Defendant Meech”) is a natural person
5 who was employed at all times relevant herein by Defendant Cavalry as a
6 collection agent and is a “debt collector” as that term is defined by 15 U.S.C. §
7 1692a(6).
8

9 **FACTUAL ALLEGATIONS**

- 10 9. On or around 2008, Plaintiff incurred a financial obligation that was
11 primarily for personal, family or household purposes and is therefore a
12 “debt” as that term is defined by 15 U.S.C. § 1692a(5), namely, a Credit
13 Card debt with HSBC Bank, which was used by Plaintiff for personal, family
14 and household purchases.
15

- 16 10. Plaintiff disputes the amount of the debt that Defendant Cavalry claims is
17 owed.
18

- 19 11. The debt was consigned, placed or otherwise transferred from the creditor to
20 Defendants for collection from this Plaintiff.
21

22 ***June 2, 2010 Collection Call***

- 23 12. On June , 2010 Defendant Jane Doe contacted Plaintiff by telephone in an
24 effort to collect this debt, which was a “communication” in an attempt to
25 collect a debt as that term is defined by 15 U.S.C. § 1692a(2).

1 13. The June 2, 2010 call to Plaintiff from Defendant Jane Doe was the “initial
2 communication by all defendants,” pursuant to 15 U.S.C. 1692e(11).

3
4 14. Defendant Jane Doe did not provide Plaintiff with the disclosures required
5 pursuant to 15 U.S.C. 1692 e(11) or 15 U.S.C. 1692g(a) *et seq.*, nor did
6 Defendant provide Plaintiff with such in writing within five (5) days
7 thereafter. (15 U.S.C. § 1692g(a) *et seq.*)
8

9 ***June 8, 2010 Collection Call***

10 15. On June 8, 2010, Plaintiff was contacted by an employee of Defendant
11 Cavalry who identified herself as “Theresa”. Defendant Theresa Doe
12 contacted Plaintiff by telephone in an effort to collect this debt, which was a
13 “communication” in an attempt to collect a debt as that term is defined by 15
14 U.S.C. § 1692a(2).
15

16 16. Defendant Theresa Doe did not provide Plaintiff with the disclosures
17 required pursuant to 15 U.S.C. 1692 e(11).
18

19 ***August 16, 2010 Collection Call***

20 17. On August 16, 2010, Defendant Meech contacted Plaintiff by telephone in
21 an effort to collect this debt, which was a “communication” in an attempt to
22 collect a debt as that term is defined by 15 U.S.C. § 1692a(2).
23

24 18. Defendant Meech did not provide Plaintiff with the disclosures required
25 pursuant to 15 U.S.C. 1692e(11).

1 19. Defendant Meech stated to Plaintiff that Plaintiff did not respond to her “seven
2 (7) day sue letter”. Defendant Meech then stated that if Plaintiff did not pay
3 the balance that Defendant Meech claimed was owed, she would sue Plaintiff.
4

5 20. Defendant Meech did have authority to initiate a lawsuit on behalf of herself or
6 her employer, Defendant Cavalry, pertaining to any debt alleged by
7 Defendants to be owed by Plaintiff.
8

9 21. Defendant Meech did not intend to sue Plaintiff.

10 22. As of the date this complaint was filed, no defendant herein has sued Plaintiff.

11 23. Defendant Meech’s statement was a threat to take an “action cannot legally be
12 taken or that is not intended to be taken” in violation of 15 U.S.C. 1692e(5).
13

14 ***August 18, 2010 Collection Call***

15 24. On August 18, 2010, Defendant Meech again contacted Plaintiff by
16 telephone in an effort to collect this debt, which was a “communication” in
17 an attempt to collect a debt as that term is defined by 15 U.S.C. § 1692a(2).
18

19 Defendant Meech did not provide Plaintiff with the disclosures required
20 pursuant to 15 U.S.C. 1692e(11).
21

22 ***Other Collection Calls***

23 25. On at least four (4) occasions in addition to those listed in paragraphs eleven
24 (11) through twenty three (23), Defendants contacted Plaintiff by telephone in
25

1 an effort to collect this debt. Each additional “communication” was an
2 attempt to collect a debt as that term is defined by 15 U.S.C. § 1692a(2).
3
4 Defendants did not provide Plaintiff with the disclosures required pursuant to
5 15 U.S.C. 1692e(11) in these additional calls.

6 *Summary*

- 7
8 26. All of the above-described collection communications made to Plaintiff by
9 Defendant Cavalry, Defendant Cavalry, and other collection employees
10 employed by Defendant Cavalry, were made in violation of numerous and
11 multiple provisions of the FDCPA, including but not limited to 15 U.S.C. §
12 1692e, 1692e(5), 1692e(10), and 1692f, amongst others.
13
14 27. During their collection communications, Defendants and these individual
15 debt collectors employed by Defendants Doe 1, Doe 2 and Meech repeatedly
16 failed to provide Plaintiffs with the notices required by 15 U.S.C. §
17 1692e(11), in violation of numerous and multiple provisions of the FDCPA,
18 including but not limited to 15 U.S.C. § 1692e, 1692e(5), 1692e(10),
19 1692e(11), and 1692f, amongst others.
20
21 28. Defendants’ illegal abusive collection communications as more fully described
22 above were the direct and proximate cause of emotional distress on the part of
23 Plaintiff.
24
25

1 29. Plaintiff has suffered actual damages as a result of these illegal collection
2 communications by these Defendants in the form of anger, anxiety, emotional
3 distress, fear, frustration, upset, humiliation, embarrassment, amongst other
4 negative emotions.
5

6 ***Respondeat Superior Liability***
7

8 30. The acts and omissions of Defendant Cavalry, and the other debt collectors
9 employed as agents by Defendant Cavalry who communicated with Plaintiffs
10 as more further described herein, were committed within the time and space
11 limits of their agency relationship with their principal, Defendant Cavalry.
12

13 31. The acts and omissions by Defendant Cavalry and these other debt collectors
14 were incidental to, or of the same general nature as, the responsibilities these
15 agents were authorized to perform by Defendant Cavalry in collecting
16 consumer debts.
17

18 32. By committing these acts and omissions against Plaintiffs, Defendant Cavalry
19 and these other debt collectors were motivated to benefit their principal,
20 Defendant Cavalry.
21

22 33. Defendant Cavalry is therefore liable to Plaintiffs through the Doctrine of
23 Respondeat Superior for the intentional and negligent acts, errors, and
24 omissions done in violation federal law by its collection employees,
25

1 including but not limited to violations of the FDCPA in their attempts to
2 collect this debt from Plaintiff.

3
4 **TRIAL BY JURY**

5 34. Plaintiffs are entitled to and hereby respectfully demand a trial by jury on all
6 issues so triable. US Const. amend. 7. Fed.R.Civ.P. 38.

7
8 **CAUSE OF ACTION**

9 **VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**

10 **15 U.S.C. § 1692 et seq.**

11 35. Plaintiffs incorporate by reference all of the above paragraphs of this
12 Complaint as though fully stated herein.

13
14 36. The foregoing acts and omissions of each and every Defendant and their
15 agents constitute numerous and multiple violations of the FDCPA including,
16 but not limited to, each and every one of the above-cited provisions of the
17 FDCPA, 15 U.S.C. § 1692 et seq., with respect to each of these Plaintiffs.

18
19 37. As a result of each and every Defendant's violations of the FDCPA,
20 Plaintiffs are entitled to actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
21 statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. §
22 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15
23 U.S.C. § 1692k(a)(3), from each and every Defendant herein.

24
25 **PRAYER FOR RELIEF**

1 **WHEREFORE**, Plaintiffs pray that judgment be entered against each and
2 every Defendant:
3

4
5 **VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**

6 **15 U.S.C. § 1692 et seq.**

- 7
- 8 • for an award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1)
9 against each and every Defendant and for each Plaintiff;
 - 10 • for an award of statutory damages of \$1,000.00 pursuant to 15 U.S.C.
11 §1692k(a)(2)(A) against each and every Defendant and for each Plaintiff;
 - 12 • for an award of costs of litigation and reasonable attorney's fees pursuant
13 to 15 U.S.C. § 1692k(a)(3) against each and every Defendant and for each
14 Plaintiff;
 - 15 • for such other and further relief as may be just and proper.
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20

21 Dated: October 28, 2010
22
23
24
25

Respectfully submitted,

KIRK D. MILLER, P.S.

/s Kirk Miller

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